

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION**

ZAGG INC,

Case No.: 1:23-cv-20304-RKA

Plaintiff,

v.

MENACHEM MENDEL ICHILEVICI;
TX TRADING INC.;
DVG TRADE LLC; and

Defendants.

_____ /

DVG TRADE LLC,

Counterclaim-Plaintiff,

v.

ZAGG INC., SCREENYA, LLC,
MERRIL LONGMORE, and
BRENDAN BUCKNER,

Counterclaim-Defendants.

_____ /

ORDER FOLLOWING DISCOVERY HEARING

THIS CAUSE came before the Court following an in-person hearing on May 15, 2024, on the parties' discovery disputes. [ECF No. 177]. At the hearing, the undersigned heard Defendant DVG Trade, LLC's ("DVG") discovery dispute concerning (1) ZAGG, Inc.'s ("ZAGG") alleged failure to search and collect documents, e-mails, or text messages from any of its board members, including Daniel Allen and Matthew Sevic; and (2) ZAGG's assertion that its board members are not in possession, custody, or control of certain documents requested in DVG's First and Second Requests for Production ("RFPs"). The undersigned also heard ZAGG's discovery dispute

concerning DVG's alleged failure to (1) produce a hit list of documents and (2) search and produce relevant communications, pursuant to the undersigned's direction at the March 18, 2024, hearing, which required ZAGG to issue an RFP containing its proposed search terms. [ECF No. 176]. The Court, having heard argument of counsel and being otherwise advised in the premises, it is, **ORDERED and ADJUDGED** as follows:

DVG's discovery dispute:

DVG failed to request documents from ZAGG's board members in its First and Second RFPs and its present request is untimely. In November of 2023, at the deposition of Mr. Sevick, DVG learned that ZAGG's board members' e-mails, files, and text messages had not been searched for documents responsive to DVG's RFPs. DVG has failed to provide any reasonable justification for its untimely request. [May 15, 2024 Hearing Transcript, 21:17–21; 26:24–31:5; 41:3–43:1; 66:25–67:11]. Therefore, DVG's requests are **DENIED**.

ZAGG's discovery dispute:

DVG's counsel stated that it has run three separate document searches of the terms in ZAGG's RFPs thus far in this case. [*Id.* at 63:10–22]. However, they have failed to produce to ZAGG a list of hits relevant to the search. Therefore, counsel for DVG shall make all efforts to obtain a list of hits and produce that list to counsel for ZAGG. [*Id.* at 66:9–24]. The hit list shall apply to ZAGG products as defined in its Complaint. [*Id.*].

In addition, ZAGG requested that DVG produce certain automated messages containing confirmations of its sales of ZAGG products. While counsel for ZAGG previously stated that it did not require these messages as part of DVG's production, ZAGG renewed this request at this hearing due to DVG's limited production of any documents in this case. Therefore, ZAGG's

request that DVG produce all automated invoices from May 1, 2024 to May 15, 2024 is **GRANTED**.

Finally, based on the parties' representation in open court, despite DVG's sales of ZAGG products totaling approximately **\$24 million**, DVG has produced only **26 e-mails** and only **three invoices** evidencing sales in response to ZAGG's RFPs. [*Id.* at 43:17–21; 45:7–9; 62:4–9]. While DVG's corporate representative, Menachem Ichilevici, claims that he conducts his business with vendors either in-person, by telephone, or by text message, according to ZAGG, he has yet to produce sufficient text messages or other documents to support this contention. At this juncture, ZAGG's concerns regarding the possibility of spoliation of evidence by DVG were again raised at the discovery hearing. [*Id.* at 51:15–52:5]. ZAGG has previously sought a finding from the Court as to spoliation in a December 22, 2023, correspondence discussing DVG's discovery violations. Accordingly, if ZAGG can establish evidence of spoliation, it may renew its request by contacting chambers, at which point the Court will set the issue on a briefing schedule and schedule an in-person hearing.

DONE and ORDERED in Miami, Florida on this 24th day of May, 2024.



LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

cc: **All Counsel of Record**